

AMENDED IN ASSEMBLY JUNE 17, 2003

AMENDED IN SENATE APRIL 24, 2003

**SENATE BILL**

**No. 300**

**Introduced by Senator Karnette**

February 19, 2003

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An act to *amend Sections 2912 and 5028 of, and to add Section Sections 2912.5 and 2912.7* to the Penal Code, relating to foreign prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 300, as amended, Karnette. Foreign prisoners.

Existing law generally regulates the transfer of prisoners between various state, local, and federal facilities, and the transfer of undocumented felons, as specified.

The bill would make findings and declarations of the Legislature in regard to the transfer of foreign prisoners pursuant to various international treaties, including the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. This bill would set forth conditions for the transfer of foreign prisoners by the Board of Prison Terms and circumstances requiring the board to transfer foreign prisoners, as specified.

*This bill would expand related provisions to encourage the transfer of prisoners who are documented felons as well as undocumented felons.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. *Section 2912 of the Penal Code is amended to read:*

2912. (a) Under its Foreign Prisoner Transfer Program, the Board of Prison Terms shall devise a method of notifying each *documented and* undocumented felon in a prison or reception center operated by the Department of Corrections that he or she may be eligible to serve his or her term of imprisonment in his or her country of origin as provided in federal treaties.

(b) (1) The Board of Prison Terms shall actively encourage each eligible *documented or* undocumented felon to apply for return to his or her country of origin as provided in federal treaties and shall provide quarterly reports outlining its efforts under this section to the Chairperson of the Joint Legislative Budget Committee and the chairperson of each fiscal committee of the Legislature.

(2) The Board of Prison Terms shall adopt the model program developed by the State of Texas for encouraging participation in the federal repatriation program where appropriate.

SEC. 2. Section 2912.5 is added to the Penal Code, to read:

2912.5. ~~(a)~~ The Legislature finds and declares the following:

~~(1)~~

(a) The purpose of the 1983 Council of Europe Convention on the Transfer of Sentenced Persons, to which the United States was an original sponsor and signatory, is to facilitate the transfer of foreign prisoners to their home countries. The treaty provides a simple, speedy and flexible mechanism for the repatriation and continued incarceration of prisoners. The United States was actively involved in the elaboration of the text of the convention, which was warranted by a number of high profile cases where there was strong public interest in bringing United States citizens back to the United States to serve their sentences on American soil. Other similar treaties establish procedures for prisoner transfers between the United States and Canada, Mexico and the Organization of American States. In all existing transfer treaties, the subject prisoner, the sending state and the receiving state must agree to the transfer.

~~(2)~~

1 (b) California has acknowledged prisoner transfer treaties in  
2 Section 12012.1 of the Government Code, which authorizes the  
3 Governor to approve transfers when a treaty is in force providing  
4 for them. Further, Section 2912 of the Penal Code specifically  
5 mandates the Board of Prison Terms to “notif[y] each  
6 undocumented felon ... that he or she may be eligible to serve his  
7 or her term of imprisonment in his or her country of origin as  
8 provided in federal treaties.” Similarly, the Board of Prison Terms  
9 must “actively encourage” undocumented foreign prisoners to  
10 apply for return to their countries of origin.

11 ~~(3)~~

12 (c) There exists a large number of foreign prisoners in the  
13 California penal system who contribute significantly to the overall  
14 prison population, and there would be substantial cost savings for  
15 the California taxpayer if these prisoners were transferred to their  
16 countries of origin.

17 ~~(4)~~

18 (d) Since the ratification of the Council of Europe Convention  
19 in 1985 there have been extremely few transfers of foreign  
20 prisoners from California, and this dearth of transfers is of concern  
21 to important trading partners of California and critical partners of  
22 the United States in the International Coalition Against Terrorism,  
23 including, but not limited to, Canada and Member States of the  
24 European Union. One reason given for this situation is that there  
25 rarely is equivalency between California sentences and the  
26 sentences imposed for similar offenses in receiving states.  
27 However, this situation is anticipated in the convention and similar  
28 treaties. The United States government routinely transfers foreign  
29 prisoners, including those with indeterminate sentences, for  
30 continued incarceration even though shorter sentences may result.  
31 The opposite also results; American citizens are routinely returned  
32 home to serve out their sentences, which on occasion may be  
33 shortened under federal sentencing rules and practices.  
34 Furthermore, some signatories to the convention voluntarily  
35 choose to enforce the sentence imposed by the court of the  
36 sentencing state and thus similar sentences result.

37 ~~(5)~~

38 (e) To assure that the convention and similar treaties are  
39 observed and to honor California’s relations with its international  
40 partners, California must exercise a greater degree of flexibility in



1 its approach to prisoners eligible for transfer under these treaties  
2 than it has in the past.

3 ~~(6)~~

4 (f) It is the intent of the Legislature in enacting this measure to  
5 expedite future transfers and to promote the reintegration of  
6 foreign prisoners into their country of origin for the purpose of  
7 reducing the possibility that they will attempt to reenter this  
8 country after completing their sentences.

9 ~~(b) The~~

10 *SEC. 3. Section 2912.7 is added to the Penal Code, to read:*

11 *2912.7. In addition to the usual permissive operation of the*  
12 *transfer treaties, the Governor or the Governor's designee as*  
13 *authorized in Section 12012.1 of the Government Code shall*  
14 *transfer foreign prisoners under the following conditions:*

15 ~~(1) The United States Department of Justice has approved the~~  
16 ~~transfer.~~

17 ~~(2)~~

18 ~~(1) In the instances of foreign prisoners who are~~ *instance of an*  
19 *application of a foreign prisoner who is serving a determinate*  
20 *sentence and who is eligible for transfer under an existing treaty,*  
21 *such as the Council of Europe Convention on the Transfer of*  
22 *Sentenced Persons and bilateral transfer treaties with Mexico and*  
23 ~~Canada~~ *other countries, the Governor or the Governor's designee*  
24 *as authorized in Section 12012.1 of the Government Code shall*  
25 *expeditiously transfer a prisoner to federal custody for transfer to*  
26 *the prisoner's country of origin when that prisoner has made an*  
27 *application for transfer which is supported by the receiving state*  
28 *unless there is a substantial difference between the remainder of*  
29 *the sentence to be served in California and the sentence complete*  
30 *sentence including any attendant mandatory parole provisions, to*  
31 *be served in the receiving state as determined by the rules, laws and*  
32 *procedures of the receiving state as provided for under an existing*  
33 *treaty, and as provided in writing to the Chairperson of the Board*  
34 *of Prison Terms pursuant to Chapter 10 (commencing with Section*  
35 *2870) of Division 2 of Title 15 of the California Code of*  
36 *Regulations, or any successor regulations, following approval of*  
37 *the transfer by the United States Department of Justice.*

38 ~~(3) In instances in which there is a substantial difference~~  
39 ~~between the remainder of the sentence to be served in California~~  
40 ~~and the sentence to be served in the receiving state as determined~~

1 ~~by the rules, laws, and procedures of the receiving state as~~  
2 ~~provided for under an existing treaty, the Governor or the~~

3 (2) *In the instance of a request of a foreign prisoner who is*  
4 *serving an indeterminate sentence and who is eligible for transfer*  
5 *under one or more of the various multilateral and bilateral*  
6 *prisoner transfer treaties, and the receipt, under chapter 10*  
7 *(commencing with Section 2870) of Chapter 10 of Division 2 of the*  
8 *California Code of Regulations by the Chairperson of the Board*  
9 *of Prison Terms of a letter from the receiving nation stating its*  
10 *intention to accept the transferred prisoner and indicating the*  
11 *receiving nation's intentions regarding the incarceration of the*  
12 *prisoner, and the Board of Prison Terms' denial of transfer under*  
13 *the instant application under the usual and customary operation*  
14 *of the provisions of the subject treaty, the Governor or the*  
15 *Governor's designee as authorized in Section 12012.1 of the*  
16 *Government Code shall accept as a sufficient guarantee and shall*  
17 *proceed expeditiously with a prisoner's transfer to federal custody*  
18 *for transfer to the prisoner's country of origin if the Minister of*  
19 *Justice, Attorney General, or similar ranking law enforcement*  
20 *officer of the receiving state does all of the following in writing:*

21 ~~(A)~~

22 (a) Agrees to receive the prisoner.

23 ~~(B)~~

24 (b) Agrees that, for a prisoner with an indeterminate sentence,  
25 the receiving state will not release the prisoner earlier than when  
26 the prisoner would have been eligible for parole had the prisoner  
27 remained in the California corrections system, as determined  
28 pursuant to Division 2 (commencing with Section 2000) of Title  
29 15 of the California Code of Regulations.

30 ~~(C) Agrees that, for a prisoner serving a determinate sentence,~~  
31 ~~the receiving state will not release the prisoner earlier than when~~  
32 ~~the prisoner would have been eligible for parole as determined~~  
33 ~~with consideration for sentence adjustments under Article 2.5~~  
34 ~~(commencing with Section 2930) of Title 1 of Part 3 of the Penal~~  
35 ~~Code, paragraph (5) of subdivision (c) of Section 667 of the Penal~~  
36 ~~Code, paragraph (5) of subdivision (a) of Section 1170.12 of the~~  
37 ~~Penal Code, or any other applicable statutory provision controlling~~  
38 ~~time served on a determinate sentence.~~

39 ~~(D)~~

1 (c) Indicates that an individualized determination has been  
2 made that the prisoner has a strong attachment to the receiving  
3 state through one or more family members or other longstanding  
4 personal relationships in the receiving state.

5 ~~(E)~~

6 (d) Indicates the receiving state's assessment that these family  
7 members or other personal relationships will facilitate the  
8 rehabilitation of the prisoner and his or her successful reentry into  
9 the receiving state's society.

10 *SEC. 4. Section 5028 of the Penal Code is amended to read:*

11 5028. (a) Upon the entry of any person who is ~~an~~ a  
12 *documented or* undocumented alien subject to deportation into a  
13 facility operated by the Department of Corrections, and at least  
14 every year thereafter, the Director of Corrections shall inform the  
15 person that he or she may apply to be transferred to serve the  
16 remainder of his or her prison term in his or her country of origin.

17 (b) The Department of Corrections shall implement and  
18 maintain procedures to process applications for the transfer of  
19 prisoners to their countries of origin under subdivision (a), and  
20 shall forward the applications to the Board of Prison Terms for  
21 appropriate action.

22 (c) The Department of Corrections may pay any foreign  
23 country to which an inmate is transferred under subdivision (a) no  
24 more than two thousand dollars (\$2,000) from moneys  
25 appropriated by the Legislature for that purpose for every year that  
26 the inmate is imprisoned until he or she has completed the prison  
27 term which he or she began serving in this state.

28 \_\_\_\_\_  
29 CORRECTIONS

30 **Text — Page 4.**